

**IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER**

IN THE MATTER OF:

**LEONARD DOLEZAL  
Johnson County, Iowa**

ADMINISTRATIVE ORDER

NO. 2010-AQ- 41  
NO. 2010-SW- 34

TO: Leonard Dolezal  
7207 6<sup>th</sup> Street S.W.  
Cedar Rapids, Iowa 52404-7010

**I. SUMMARY**

This Order requires you to comply with the provisions in Section V of this Order, subject to your appeal rights stated in this Order.

Questions regarding this Order should be directed to:

**Relating to technical requirements: Relating to legal requirements:**

Russell Royce, Field Office 6  
Iowa Department of Natural Resources  
1023 W. Madison  
Washington, Iowa 52353-1623  
Phone: 319/653-2135

Kelli Book, Attorney for the DNR  
Iowa Department of Natural Resources  
7900 Hickman Road, Suite 1  
Windsor Heights, Iowa 50324  
Phone: 515/281-8563

**Payment of penalty to:**

Iowa Department of Natural Resources  
Henry A. Wallace Building  
502 East Ninth Street  
Des Moines, Iowa 50319-0034

**II. JURISDICTION**

Pursuant to the provisions of Iowa Code sections 455B.134(9) and 455B.138(1) which authorize the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division II (air quality), and the rules promulgated or permits issued pursuant to that part; Iowa Code section 455B.307(2) which authorizes the Director to issue any order necessary to secure compliance with or prevent a violation of Iowa Code chapter 455B, Division IV, Part 1 (solid waste), and the rules adopted pursuant to that part; and Iowa Code section 455B.109 and 567 Iowa Administrative Code (IAC) chapter 10, which

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: LEONARD DOLEZAL

authorize the Director to assess administrative penalties, DNR has jurisdiction to issue this Order.

**III. STATEMENT OF FACTS**

1. Leonard Dolezal owns property located in rural Johnson County, Iowa. The property is located on Tharp Road in Jefferson Township of Johnson County. The property does not have an Emergency 911 address and is listed as Parcel ID 0305201001 with the Johnson County assessor's office. The property is an unoccupied farmstead with only out buildings.

2. On January 6, 2010, DNR Field Office 6 received a complaint from the Jefferson-Monroe Fire Department regarding the open burning of tires at Mr. Dolezal's property. The complaint stated that on January 5, 2010, the fire department responded to a tire fire at the property. The fire department observed a man, who identified himself as Richard Hawkins, burning the tires. Mr. Hawkins stated he was working for Mr. Dolezal and Mr. Dolezal had told him to burn the materials.

3. On January 14, 2010, Russell Royce, DNR Field Office 6 environmental specialist, conducted a complaint investigation at Mr. Dolezal's property. During the investigation, Mr. Royce noted an area where tires had been burned along with various other solid waste, including white goods.

4. On February 1, 2010, DNR Field Office 6 issued a Notice of Violation letter to Mr. Dolezal for the improper solid waste disposal and open burning observed by the fire department on January 5, 2010 and confirmed by Mr. Royce on January 14, 2010. The letter explained the solid waste and open burning regulations. Mr. Dolezal was required to stop open burning and to remove, recycle, or salvage the remaining solid waste material by March 1, 2010.

5. On April 8, 2010, Mr. Royce returned to the property to determine if the property had been cleaned up. Mr. Royce noted that tires, tire remnants, and the solid waste remained at the property. On May 20, 2010, DNR Field Office 6 issued a Notice of Violation letter to Mr. Dolezal for the improper solid waste disposal and open burning that had occurred on his property. The letter required Mr. Dolezal to properly remove the solid waste by June 17, 2010. The letter stated if the material was not removed by that date that further enforcement would follow.

6. On May 11, 2010, DNR Field Office 6 received a complaint from the Jefferson-Monroe Fire Department regarding the open burning of tires and other solid waste at Mr. Dolezal's property. The complaint stated that on May 10, 2010, the fire department responded to a call about black smoke coming from Mr. Dolezal's property. The fire department noted that trees, tires, an LP tank, and plastics were being burned.

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: LEONARD DOLEZAL

7. On June 2, 2010, Mr. Royce conducted a complaint investigation at Mr. Dolezal's property. Mr. Royce observed evidence of improper solid waste disposal and open burning. He observed burn piles of tires and other solid waste. He noted that more solid waste had been added to the burn piles since Mr. Dolezal had been required to properly dispose of the solid waste. Mr. Royce attempted to contact Mr. Dolezal and was not able to contact him. Mr. Royce left a business card at Mr. Dolezal's residence requesting that Mr. Dolezal contact Mr. Royce. Mr. Dolezal did not contact Mr. Royce.

**IV. CONCLUSIONS OF LAW**

1. Iowa Code section 455B.133 provides that the Environmental Protection Commission (Commission) shall establish rules governing the quality of air and emission standards. The Commission has adopted 567 IAC chapters 20-35 relating to air quality.

2. 567 IAC 23.2(1) prohibits any person from allowing, causing, or permitting open burning of combustible materials, except as provided in 23.2(2) (variances) and 23.2(3) (exemptions). On two separate occasions the fire department responded to fires at Mr. Dolezal's property. The fires involved the burning of tires and other solid waste. DNR Field Office 6 observed evidence of open burning on numerous occasions as well. The above facts demonstrate noncompliance with this provision.

3. Iowa Code section 455B.304 provides that the Commission shall establish rules governing the handling and disposal of solid waste. The Commission has adopted such rules at 567 IAC chapters 100-123.

4. 567 IAC 100.4 prohibits a private or public agency from dumping or depositing or allowing the dumping or depositing of any solid waste at any place other than a sanitary disposal project approved by the Director. On two separate occasions the fire department responded to fires at Mr. Dolezal's property. The fires involved the burning of tires and other solid waste. DNR Field Office 6 observed evidence of open burning on numerous occasions as well. The material was destroyed by fire rather than being properly disposed of at a landfill. The above facts demonstrate noncompliance with this provision.

**V. ORDER**

THEREFORE, the DNR orders Leonard Dolezal to do the following:

1. Immediately cease the improper solid waste disposal and open burning at his property;
2. Take immediate steps to ensure that no further improper solid waste disposal and open burning occurs at his property;

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: LEONARD DOLEZAL

3. Properly dispose of all remaining solid waste at his property within 60 days of receipt of this Order, subject to appeal rights stated in Section VII; and
4. Pay a penalty of \$2,400.00 within 60 days of receipt of this Order, subject to appeal rights stated in Section VII.

**VI. PENALTY**

Iowa Code section 455B.146 authorizes the assessment of civil penalties of up to \$10,000.00 per day of violation for the air quality violations involved in this matter. More serious criminal sanctions are also available pursuant to that provision. Iowa Code section 455B.307(3) provides for civil penalties of up to \$5,000.00 per day for solid waste violations involved in this matter.

Iowa Code section 455B.109 authorizes the Commission to establish by rule a schedule of civil penalties up to \$10,000.00 that may be assessed administratively. The Commission has adopted this schedule with procedures and criteria for assessment of penalties through 567 IAC chapter 10. Pursuant to this rule, the DNR has determined that the most effective and efficient means of addressing the above-cited violations is the issuance of an Order with a \$2,400.00 penalty. The administrative penalty assessed by this Order is determined as follows:

Economic Benefit - 567 IAC chapter 10 requires that the DNR consider the costs saved or likely to be saved by noncompliance. 567 IAC 10.2(1) states that "where the violator received an economic benefit through the violation or by not taking timely compliance or corrective measures, the department shall take enforcement action which includes penalties which at least offset the economic benefit." 567 IAC 10.2(1) further states, "reasonable estimates of economic benefit should be made where clear data are not available." Failure to follow the proper waste disposal regulations by the improper open burning and disposal of the tires and solid waste has allowed Mr. Dolezal to save time and money. It is estimated that Mr. Dolezal avoided landfill fees of approximately \$100.00; transportation costs of approximately \$200.00; and labor costs of approximately \$100.00. Based on the above considerations, \$400.00 is assessed for this factor.

Gravity of the Violation - One of the factors to be considered in determining the gravity of a violation is the amount of penalty authorized by the Iowa Code for that type of violation. As indicated above, substantial civil penalties are authorized by statute. Despite the high penalties authorized, the DNR has decided to handle the violations administratively at this time, as the most equitable and efficient means of resolving the matter. Open burning of solid waste results in the release of large amounts of particulates, carbon monoxide, and hydrocarbons. Such open burning may violate ambient air standards. Open burning releases toxins which pollute the

IOWA DEPARTMENT OF NATURAL RESOURCES  
ADMINISTRATIVE ORDER  
ISSUED TO: LEONARD DOLEZAL

air, may pollute groundwater, and pose a risk to human health and the environment. Improper disposal of solid waste creates nuisance conditions for surrounding property owners and the potential contamination of soil and groundwater. These violations threaten the integrity of the regulatory program because compliance with the open burning and solid waste regulations is required of all persons in this state. Therefore, \$1,000.00 is assessed for this factor.

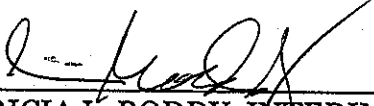
Culpability – Mr. Dolezal has a duty to remain knowledgeable of DNR's requirements and to be alert to the probability that his conduct is subject to DNR's rules. The open burning and solid waste disposal regulations have been in place for more than 20 years. Mr. Dolezal was notified in a Notice of Violation letter of the open burning and solid waste regulations and was required to properly remove the solid waste. Mr. Dolezal failed to comply with the letter and ignored the regulations as evidenced from the second complaint from the fire department. Based on the above considerations, \$1,000.00 is assessed for this factor.

**VII. APPEAL RIGHTS**

Pursuant to Iowa Code sections 455B.138 and 455B.308, and 567 IAC chapter 7, a written Notice of Appeal to the Commission may be filed within 30 days of receipt of this Order. The Notice of Appeal should be filed with the Director of the DNR and must identify the specific portion or portions of this Order being appealed and include a short and plain statement of the reasons for appeal. A contested case hearing will then be commenced pursuant to Iowa Code chapter 17A and 561 IAC chapter 7.

**VIII. NONCOMPLIANCE**

Compliance with Section V of this administrative consent order constitutes full satisfaction of all requirements pertaining to the violations described in this administrative consent order. Failure to comply with this administrative consent order may result in the imposition of administrative penalties pursuant to an administrative order or referral to the Attorney General to obtain injunctive relief and civil penalties pursuant to Iowa Code sections 455B.146 and 455B.307.

  
\_\_\_\_\_  
PATRICIA L. BODDY, INTERIM DIRECTOR  
Iowa Department of Natural Resources

Dated this 5 day of  
10, 2010.

Barb Stock (Con 10-6 Johnson County); Kelli Book; DNR Field Office 6; VI.C and VII.C.1